IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 22 of 1985

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI
and
Hon'ble MR.JUSTICE A.R.DAVE

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

1 to 5 No

COMMISSIONER OF INCOME TAX

Versus

ARZEEZ KHAMBHATTA FAMILY TRUST

Appearance:

MR AKIL QURESHI for MR MANISH R BHATT for Petitioner

MR HM TALATI for Respondent No. 1

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI
and
MR.JUSTICE A.R.DAVE

Date of decision: 29/08/2000

ORAL JUDGEMENT

(per D.M. Dharmadhikari, C.J.)

The following 2 questions of law have been referred to us for answer in this Reference :

"1. Whether, on the facts and in the circumstances of the case and true interpretation of the trust deed the trust could be said to be a specific trust and its income could be treated as exempt?

2. Whether, on the facts and in the circumstances of the case, the assessee trust could not be considered as a discretionary trust liable to be taxed under provisions of section 164(1) of the Income-tax Act, 1961?"

The learned counsel appearing for the department has placed before us a copy of the judgment of the Division Bench of this Court dated 9.2.99 (to which one of us, A.R. Dave, J. was a party) in I.T.R. No. 160/84 in a case of the same assessee. It is stated that the questions referred to us have been squarely answered in favour of the assessee quoting that "it is a specific trust".

Since the questions referred to us are squarely concluded in favour of the assessee, in assessee's own case (CIT v. Areez Khambhatta Family Trust) by a judgment of this Court in I.T.R. No. 160/84, the two above-referred questions are answered in favour of the assessee and against the revenue.

The Reference stands disposed of with no order as to costs.

(D.M. Dharmadhikari, C.J.)

(A.R. Dave, J.)

(hn)